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Sup. Ct. 124; see also COMMENTS (1922) 31 YALE LAW JOURNAL, 408. Since most of the state anti-trust acts are modelled after the Sherman Act, it will be important to know whether the state courts will accept this interpretation of state statutes. See also COMMENTS (1922) 31 YALE LAW JOURNAL, 643.

TRESPASS—TREES SEVERED FROM FREEHOLD—NO RECOVERY AGAINST DEFENDANT IN ACTUAL ADVERSE POSSESSION.—In an action of trespass for cutting timber on a certain freehold, it appeared that the plaintiff claimed the premises under a land warrant, but that the defendant was in actual possession under *bona fide* claim of title adverse to that of the plaintiff. *Held,* that the plaintiff could not recover. *Kossell v. Rhoades* (1922, Pa.) 116 Atl. 56.

The constructive possession consequent upon holding paper title is a proper basis for an action of trespass. *First Nat. Bank v. Tome* (1917) 23 N. M. 255, 167 Pac. 733. But an action to recover damages for injury to the freehold or for severance and conversion of a portion of the freehold cannot be maintained by the "true owner" against one in possession, claiming title adversely. The appropriate method for trying title is by a suit in ejectment. *Johnson v. Sand & Gravel Co.* (1897, C. C. A. 7th) 86 Fed. 269. After the issue of title is thus determined, the owner is generally allowed to recover for things severed from the freehold, *fructus industriales* excepted. *Stockwell v. Phelps* (1866) 34 N. Y. 363; *contra, Powell v. Smith* (1833, Pa.) 2 Watts, 126. Although the courts usually decline to allow an action of trespass on the ground that title to realty can not be tried in a transitory action, the real reason appears to be historical. Until the real owner proved his superior title, the person in possession under claim of title was deemed owner. The rule may be also justified on practical grounds; it prevents a multiplicity of suits. See L. R. A. 1918 A, 550, 556, note; (1921) 5 MINN. L. REV. 155; COMMENTS (1920) 29 YALE LAW JOURNAL, 539.

TRUSTS—MASSACHUSETTS BUSINESS TRUST NOT "ASSOCIATION" UNDER REVENUE ACTS.—The plaintiff, a Massachusetts trust, sued to recover a tax paid under the Act of September 8, 1916 (39 Stat. at L. 789) providing for payment of a tax by "every corporation, joint-stock company, or association . . . . having a capital stock represented by shares," and the Act of February 24, 1919 (40 Stat. at L. 1126) providing for a special excise tax in lieu of the tax imposed by the Act of 1916. *Held,* that the plaintiff could recover. *Hecht v. Malley* (1921, D. Mass.) 276 Fed. 830.

In spite of the fact that the Act of 1916, unlike the other acts which have been construed in connection with this question, contains a comma between "joint-stock company" and "or association," the instant case affirms the previous decisions. *Eliot v. Freeman* (1911) 220 U. S. 178, 31 Sup. Ct. 360; *Crocker v. Malley* (1919) 249 U. S. 223, 39 Sup. Ct. 270. The court reasoned that since the other kinds of organizations mentioned in the act are characterized by powers derived from statutes, "association" was also intended to bring under the tax only such groups as invoked special statutory powers in their organization. This is not true of a Massachusetts trust. For a discussion of this problem, see COMMENTS (1918) 27 YALE LAW JOURNAL, 677; (1919) 28 *ibid.* 690.